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RSPA-1993-13564-153



US Department
of Transportation

Research and
Special Programs
Administration

The Administrator

400 seventh Street, S.W.
Washington, D.C. 20590

AUG 13 1993

The Honorable Herb Klein
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Klein:

Thank you for your letter to Ms. Jackie Lowey, Acting Director, Office of Congressional Affairs, forwarding correspondence from Mr. Alan C. Marcus regarding an interim final rule issued by the Department of Transportation's Research and Special Programs Administration (RSPA). Your letter has been referred to RSPA for response.

Mr. Marcus expressed concerns about RSPA's decision to adopt oil spill prevention and response planning requirements mandated by the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, within the regulatory framework of the Hazardous Materials Regulations.

Following an expedited review of the public comments on this rule, Secretary Peña determined that classifying animal and vegetable oils as hazardous materials was not supported. Subsequently, RSPA removed the hazardous materials designation and established modified requirements for oil transportation. I have enclosed a copy of the interim final rule that made these regulatory changes.

We appreciate your interest in this rulemaking. Your letter and that of Mr. Marcus have been made part of the public docket. If we can be of further assistance in this matter, please contact me or Ms. Patricia Klinger, who handles our congressional inquiries, at (202) 366-4831.

Sincerely,

Rose A. McMurray
Acting Administrator

Enclosure

HERB KLEIN
8TH DISTRICT, NEW JERSEY
1728 LONGWORTH BUILDING
WASHINGTON, DC 20516
(202) 225-6751
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PATERSON, NJ 01505
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Congress of the United States
House of Representatives
Washington, DC 20515-3008

July 9, 1993

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AND AVIATION
ENERGY

Ms. Jackie Lowey
Acting Director, Office of Congressional Affairs
U.S. Department of Transportation
Room 10406 (I-10)
400 Seventh St., S.W.
Washington, D.C. **20590**

Dear Ms. Lowey:

One of my constituents has contacted me regarding a matter in which I believe your agency could be helpful. Therefore, the enclosed communication is submitted for your review.

I would very much appreciate your responding to the points raised by my constituent, and offering any assistance available under the applicable laws and regulations. In addition, I would be especially grateful if you could respond to my Washington office.

The contact person on my staff for this case is Jeff **Steer**. He can be reached at **(202) 225-5751**.

Thank you very much for your consideration, and for advising me of any action you should take in this matter.

Sincerely,



Herb Klein
Member of Congress

HCK:js

THE MARCUS GROUP, INC.

PUBLIC AFFAIRS COUNSEL

500 PLAZA DRIVE

P.O. BOX 1309

SECAUCUS, NEW JERSEY 07096-3109

(201) 902-9000

FACSIMILE: (201) 902-6008

June 2, 1993

The Hon. Horbert Klein
1728 Longworth Building
Washington, DC 20515

Dear Herb:

As a follow-up to our recent communications regarding RSPA-US DOT, Docket No. HM 214, 49 CFR Part 171, et al, I thought it appropriate to share with you comments submitted to DOT by Commissioner Barbara McConnell of the New Jersey State Department of Commerce and Economic Development and Ms. Lillian C. Liburdi, Director, Port Department of the Port Authority of New York and New Jersey. Both the Port Authority and Department of Commerce support the position of our client Hudson Tank Terminals in opposition to the proposed regulation as presently drafted.

We hope that you will also comment to DOT and support the alternative endorsed by the Department of Commerce which calls for DOT to develop a new regulated, "non-hazardous" category for edible fats and oils. This would meet DOT's goals of preventing and responding to spills, without imposing the burdens of treating non-hazardous commodities as if they were true hazardous materials.

The comment period closes tomorrow (June 3),.

Again, thank you very much for your consideration. I look forward to hearing from you.

Sincerely,

THE MARCUS GROUP, INC.

Alan C. Marcus
President

ACM/apd
Attachments
93-563

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY

June 1, 1993



LARRY C. LEECH
Director
Port Department

Docket# Unit
Research & Special Programs Administration
Department of Transportation
400 Seventh St., S.Y.
Room 8421
Washington, D.C. 20590-0001

Re: Docket Number HM-214; Amendment
Nos. 171-119, 172-128, 173-1132,
174-71 and 176-32

Dear Sir:

The Port Authority of New York and New Jersey wishes to add its strong objection to the Department of Transportation proposal to classify animal and vegetable oil as hazardous material. Our concern is prompted by the practical implications of the proposed rule triggering New Jersey State regulations, which would have a potential adverse competitive effect on the commerce in the Port of New York/New Jersey. The problem is that New Jersey has strict regulations for handling, transporting and storing materials classified as hazardous. While these regulations, possibly the strictest in the country, may be appropriate when properly applied, their application to animal and vegetable oil would be illogical and counterproductive. By, we believe, needless requirements that animal and vegetable oils be treated as hazardous, RSPA may make it too expensive to operate a terminal in our port.


The Hudson Tank Terminals Corporation at Port Newark has 160 storage tanks and handles 600,000 metric tons of animal and vegetable oils annually. The product is transported in 12,500 tank trucks, over 1,100 rail cars, and 200 tank containers per year. All of this is in compliance with current applicable State and Federal regulations. However, the proposed regulations would make the rail and truck tankers inadequate to handle this.

The hazardous designation can add over \$300 to the cost of each railroad tank car shipment for specialized equipment and tracking costs. In excess of \$100 per employee must be invested in awareness, familiarization and safety training required by other regulations, such as OSHA, for an eventuality which will never occur; to be the "first responder" in a hazardous material spill; and, to handle a product "Generally Recognized as Safe" by the Food and Drug Administration. Insurance costs are estimated to increase 200% because of the Hazardous Materials label and its erroneous implications. The tenant would be required to hire two additional full-time persons to handle administrative and supervisory programs under the proposed federal and existing state regulations.

United States Department of Transportation
May 28, 1993
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In New Jersey, we strive to ensure a balance between economic and environmental policy. While we realize the pressures of environmental concerns in a global community, we respectfully request consideration of this amendment in the final adoption of these regulations.

sincerely,


Barbara McConnell
Commissioner



STATE OF NEW JERSEY
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
MARY G. ROEBLING BUILDING
CN 820
TRENTON, NEW JERSEY 08626-0820

BARBARA McCONNELL
COMMISSIONER
(609) 292-2664

May 28, 1993

Dockets Unit
Research and Special Programs
Administration
United States Department of Transportation
400 Seventh Street, SW
Room 8421
Washington, DC 20590-0001

RE: RSPA - US DOT, Docket No. HM 214, 49 CFR Part 171, et, al.

Dear Sir/Madam:

On behalf of the New Jersey Department of Commerce and Economic Development, we respectfully request you accept our comments on the above-referenced regulation which would classify edible animal and vegetable oils as Class V hazardous material,

New Jersey's stringent environmental statutes rely upon federal regulations to define hazardous substances. Adoption of this regulation would put local businesses at a competitive disadvantage with other states.

In particular, this regulation would have negative impact on the Port Authority of New York and New Jersey and on the shipping business in the metropolitan area by diverting commerce to other ports. Companies that transport these edible fats and oils may transfer their business to southern and Gulf ports in order to avoid the high cost of meeting New Jersey/Federal regulations.

Implementation of the proposed regulation will impose a severe financial hardship, with no net improvement in the environment. It threatens to increase the price of food products which contain these materials.

We urge DOT to develop a new regulatory category for edible fats and oils. This would meet DOT's goals of preventing and responding to spills, without imposing the burdens of treating the non-hazardous commodities as if they were true hazardous materials.

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We are told that should *the* proposed rule be implemented New Jersey State Regulations in turn will require *an* investment of almost \$1 million dollars just for high-level alarm systems to monitor overflow at Hudson Tank. Another \$4 million - \$4 million will need to be spent for containment systems, retrofitting truck and rail loading facilities, etc., which will not enhance existing programs in place to protect personnel and the environment.

The Port Newark/Elizabeth Marine Terminal facilities of the Port Authority of NY & NJ, are the largest port complex on the East Coast. This proud distinction results from a great deal of effort in a very competitive industry. In the deep water import/export bulk liquid business, we compete with Philadelphia, Norfolk, Savannah, New Orleans, Houma and the West Coast Ports. Designating animal and vegetable oil as a hazardous material and, consequently, subjecting the product to existing federal and state regulations governing such, puts our Port at a competitive disadvantage to every other port where state environmental regulations may not be enforced as stringently.

Ultimately, the question is whether the characterization of vegetable and animal oils as hazardous is appropriate and justified. After reviewing comments on the merits of the issue, we believe the proposal to be inappropriate, unjustified, and anti-competitive. We strongly urge you to reconsider this course of action.

Sincerely,


Lillian C. Liburdi
Director
Port Department